

CHAPTER 843

H.B. No. 991

AN ACT

relating to the regulation of real estate brokers, salesmen, and inspectors.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2(1), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Real estate" means a leasehold, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere. *The term does not include an interest given as security for the performance of an obligation.*

SECTION 2. Section 2(5), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Person" means an individual, *a limited liability company*, or a corporation, foreign or domestic.

SECTION 3. Section 5(t), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(t) The commission may authorize specific employees to conduct hearings and render final decisions in contested cases. *The commission may employ a general counsel, attorneys, investigators, and support staff to administer and enforce this Act.*

SECTION 4. Section 6, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. (a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesman license on a form prescribed by the commission. *A person previously licensed as a broker may apply for inactive status.* A person previously licensed as a salesman may apply for inactive status without the participation of a broker. The person must apply for inactive status on a form prescribed by the commission not later than the first anniversary of the date of the expiration of the *broker or salesman license.*

(b) To be eligible for a license, an individual must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a legal resident of Texas ~~[for]~~ *at the time of [least 60 days immediately preceding]* the filing of an application, and must satisfy the commission as to his honesty, trustworthiness, integrity, and competency. However, the competency of the individual, for the purpose of qualifying for the granting of a license, shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

(c) To be eligible for *or to renew* a license, a corporation must designate one of its officers *and a limited liability company must designate one of its managers* to act for it. The designated person must be a ~~[citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a resident of Texas for at least 60 days immediately preceding the filing of an application, and must be qualified to be]~~ licensed ~~[individually as a]~~ real estate broker *as shown in the records of the commission.* *A corporation or limited liability company may not act as a real estate broker unless the designated person is a licensed real estate broker.* ~~However, the competency of the person shall be judged solely on the basis of the examination referred to in Section 7 of this Act].~~

SECTION 5. Section 6A(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If, at any time before a person applies for a license under this Act, the person requests the commission to determine whether his moral character complies with the commission's moral character requirements for licensing under this Act and the person pays a ~~[\$10]~~ fee *set by the commission* for the moral character determination, the commission shall make its determination of the person's moral character.

SECTION 6. Sections 7(a), (e), and (f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for a real estate license fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement must be satisfied not later than six months after the date on which the application for a license is filed. Courses of study required for a license may include but are not limited to the following, which shall be considered core real estate courses for all purposes of this Act:

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, law of agency, deeds, encumbrances and liens, distinctions between personal and real property, contracts, appraisal, finance and regulations, closing procedures, real estate mathematics, and at least three classroom hours of instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arithmetic skills and review of mathematical logic, percentages, interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters depreciation, and applications to property tax.

(10) Law of Agency (or equivalent) shall include but not be limited to the principal-agent and master-servant relationships, the authority of an agent, the termination of an agent's authority, the fiduciary and other duties of an agent, employment law, deceptive trade practices, listing or buying representation procedures, and the disclosure of agency.

(e) ~~Each [As a prerequisite for applying for a salesman license; each]~~ applicant for a salesman license shall furnish the commission satisfactory evidence of having completed 12 semester hours, or equivalent classroom hours, of postsecondary education, six hours of which must be completed in core real estate courses, of which a minimum of two hours must be completed in Principles of Real Estate as described in Subsection (a)(1) of this section *and a minimum of two hours must be completed in Law of Agency as described in Subsection (a)(10) of this section.* The remaining six hours shall be completed in core real estate courses or related courses. As a condition for the first renewal of a salesman license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 14 semester hours, or equivalent classroom hours, eight hours of which must be completed in core real estate courses. As a condition for the second renewal of a salesman license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 16 semester hours, or equivalent classroom hours, 10 hours of which must be completed in core real estate courses. As a condition for the third renewal of a salesman license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 18 semester hours, or equivalent classroom hours, 12 hours of which must be completed in core real estate courses.

(f) Insofar as is necessary for the administration of this Act, the commission is authorized to inspect and accredit educational programs or courses of study in real estate *and real estate inspection* and to establish standards of accreditation for such programs conducted in the State of Texas, other than accredited colleges and universities. The commission shall

determine the acceptability of real estate courses *and real estate inspection courses* offered to satisfy the requirements of this Act, and by rule may provide reasonable criteria for the approval of those courses. Schools, other than accredited colleges and universities, which are authorized to offer real estate educational courses pursuant to provisions of this section, shall be required to maintain a corporate surety bond, or other security acceptable to the commission, in the sum of \$10,000, payable to the commission, for the benefit of a party who may suffer damages resulting from failure of a commission approved school or course to fulfill obligations attendant to the approval.

SECTION 7. Sections 7A(a) and (b), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) To renew *an active* [a] real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of relevant educational experience or correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, agency laws, antitrust laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Veterans Administration regulations, tax laws, and other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. The commission, on the request of a provider of education, shall review a core real estate course authorized under Section 7 of this Act and may approve it as a mandatory continuing education course. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses. Daily course segments must be at least three hours long but not more than 10 hours long. If the license being renewed under this section was issued for less than two years, the licensee must provide the commission proof of attendance at at least eight classroom hours of continuing education within the term of the current license, three classroom hours of which must have been devoted to the legal topics specified in this section.

(b) An applicant for *an active* [a] real estate broker license or an active real estate salesman license who is not subject to the education requirements of Section 7 of this Act must provide the commission with proof of attendance *of the number of* [at at least 15] classroom hours of continuing education *that would have been required for a timely renewal* as specified in Subsection (a) of this section during the two-year period preceding the filing of the application.

SECTION 8. Section 11, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. (a) The commission shall charge and collect the following fees:

- (1) a fee not to exceed \$100 for the filing of an original application for a real estate broker license;
- (2) a fee not to exceed \$100 for annual renewal of a real estate broker license;
- (3) a fee not to exceed \$50 for the filing of an original application for a real estate salesman license;
- (4) a fee not to exceed \$50 for annual renewal of a real estate salesman license;
- (5) a fee not to exceed \$25 for an application for a license examination;
- (6) a fee not to exceed \$20 [~~\$10~~] for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed \$20 for filing a request for a license for a change of place of business, *change of name, return to active status*, or change of sponsoring broker;

(8) a fee not to exceed \$20 [~~\$10~~] for filing a request to replace a license lost or destroyed;

(9) a fee not to exceed \$400 for filing an application for approval of *an* [~~a real estate~~] education program under Section 7(f) of this Act;

(10) a fee not to exceed \$200 a year for operation of *an* [~~a real estate~~] education program under Section 7(f) of this Act; [~~and~~]

(11) a fee of \$15 for transcript evaluation;

(12) *a fee not to exceed \$10 for preparing a license history; and*

(13) *a fee not to exceed \$50 for the filing of an application for a moral character determination.*

SECTION 9. Section 13A(c), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) If the person has been on inactive status [~~for 36 consecutive months or less~~], the commission shall remove the person from the list on application, *payment of the required fee*, and proof of attendance of at least 15 classroom hours of continuing education as specified in Subsection (a) of Section 7A of this Act during the two-year period preceding the filing of the application. [~~If the person has been on inactive status for more than 36 consecutive months, the commission may not remove the person from the inactive status list until the person has complied with the educational and examination requirements specified in Section 7 of this Act.~~]

SECTION 10. Sections 14(b) and (c), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) A resident broker of another state who furnishes the evidence required under Section 7(g) of this Act may apply for a license as a broker in this state. *A resident of another state who is not licensed as a broker but who was formerly licensed as a salesman or broker in this state may apply for a license in this state not later than the first anniversary of the date of the expiration of the previous license. An application by a nonresident is subject to the requirements under this Act for the type of license applied for.* A nonresident licensee need not maintain a place of business in this state. The commission may in its discretion refuse to issue a license to an applicant who is not a resident of this state for the same reasons that it may refuse to license a resident of this state. The commission shall judge the competency of a nonresident applicant solely on the basis of the examination conducted under Section 7 of this Act.

(c) Each nonresident applicant shall file an irrevocable consent that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by serving the administrator or assistant administrator of the commission. The consent shall stipulate that the service of process or pleading shall be valid and binding in all courts as if personal service had been made on the nonresident [~~broker~~] in this state. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. A service of process or pleading served on the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address which the commission has for the nonresident [~~broker~~] against whom the process or pleading is directed. No default in an action may be taken except on certification by the commission that a copy of the process or pleading was mailed to the defendant as provided in this section, and no default judgment may be taken in an action or proceeding until 20 days after the day of mailing of the process or pleading to the defendant.

Notwithstanding any other provision of this subsection, a nonresident of this state who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this state, and who has been an actual bona fide resident of that city for at least 60 days immediately preceding the filing of his application, is eligible to be licensed as a real estate broker or salesman under this Act in the same manner as a resident of this state. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in

which he resides or in the city in this state which is contiguous to the city in which he resides, and he may not maintain a place of business at another location in this state unless he also complies with the requirements of Section 14(b) of this Act. The place of business must satisfy the requirements of Subsection (a) of Section 12 of this Act, but the place of business shall be deemed a definite place of business in this state within the meaning of Subsection (a) of Section 12.

SECTION 11. Section 15(c), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Notwithstanding Subsection (b) of this section, a person is not subject to civil liability or criminal prosecution because the person did not inquire about, make a disclosure related to, or release information related to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the U.S. Public Health Service. ~~[A person who has actual knowledge that the previous or current occupant of real property had or has AIDS, HIV-related illnesses, or HIV infection shall provide that information to a potential purchaser or lessee of the real property on receiving a specific request for the information from the potential purchaser or lessee.]~~

SECTION 12. Section 15D, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended as follows:

Sec. 15D. No licensed real estate broker, licensed real estate salesman, or not for profit real estate board or association which provides information about real property sales prices or terms of sale for the purpose of facilitating the listing, selling, leasing, financing, or appraisal of real property shall be liable to any other person as a result of so providing such information unless the disclosure of same is otherwise specifically prohibited by statute ~~[or written contract].~~

SECTION 12A. Section 15E, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended as follows:

Sec. 15E. Notwithstanding any other provision of this Act or any other law, a licensee shall have no duty to inquire about, make a disclosure related to, or release information related to whether a:

- (1) previous or current occupant of real property had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the U.S. Public Health Service; or
- (2) death occurred on a property by natural causes, suicide, or accident unrelated to the condition of the property.

SECTION 13. Section 17(b), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. *Process issued by the commission may extend to all parts of the state and may be served by any person designated by the commission.*

SECTION 14. Section 19(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person acting as a real estate broker or real estate salesman without first obtaining a license is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a corporation or a limited liability company, shall be punishable by a fine of not less than \$1,000 nor more than \$2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for a term not to exceed two years, or both; and if a corporation or a limited liability company, shall be punishable by a fine of not less than \$2,000 nor more than \$5,000.

SECTION 15. Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. REAL ESTATE INSPECTORS. (a) Definitions. In this section:

(1) "Apprentice inspector" means a person who is in training under the direct supervision of a *professional* [~~real estate~~] inspector or a *real estate inspector* [~~inspector-in-training~~] to become qualified to perform real estate inspections.

(2) "Committee" means the Texas Real Estate Inspector Committee.

(3) "Core real estate inspection courses" means educational courses approved by the commission, including *but not limited to* structural, electrical, mechanical, plumbing, roofing, *business, legal, standards of practice, report writing, appliances or ethics, all of which must relate to a real estate inspection* [~~and ethical courses of study~~].

(4) "Direct supervision" means the instruction and control by a *professional* [~~real estate~~] inspector or a *real estate inspector* [~~inspector-in-training~~] licensed under this section who is:

(A) responsible for the actions of an individual performing a real estate inspection *or preparing a report of a real estate inspection*;

(B) available if and when needed to consult with or assist an individual performing a real estate inspection *or preparing a report of a real estate inspection*; and

(C) physically present at the time and place of the inspection.

(5) "Indirect supervision" means the instruction and control by a *professional* [~~real estate~~] inspector licensed under this section who is:

(A) responsible for the actions of an individual performing *or preparing* a real estate inspection; and

(B) available if and when needed to consult with or assist an individual performing a real estate inspection *or preparing a report of a real estate inspection*, but who is not required to be physically present at the time and place of the inspection.

(6) "*Inspector*" means a person who is licensed as an apprentice inspector, real estate inspector, or professional inspector under this section [~~"Inspector-in-training" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection under the indirect supervision of a real estate inspector and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property~~].

(7) "License" means an *apprentice license*, a real estate inspector license or a *professional inspector* [~~an inspector-in-training~~] license issued under this section.

(8) "Licensee" means a person holding an *apprentice inspector license*, a real estate inspector license or a *professional inspector* [~~inspector-in-training~~] license issued under this section.

(9) "*Professional inspector*" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property.

(10) [(9)] "Real estate inspection" means a written or oral opinion as to the condition of the improvements to real property, including structural items, *electrical items, mechanical systems, plumbing systems, or equipment* [~~and systems~~].

(11) [(10)] "Real estate inspector" means a person who represents to the public that the person is trained and qualified to perform real estate inspections *under the indirect supervision of a professional inspector* and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property.

[(11) "Registered" means a person who holds a registration as an apprentice inspector issued under this section.]

(b) Texas Real Estate Inspector Committee. (1) The Texas Real Estate Inspector Committee is created. In addition to other powers and duties delegated to it by the commission, the committee shall recommend:

(A) rules for the [~~registration and~~] licensing of [~~apprentice~~] inspectors [~~, inspectors-in-training, and real estate inspectors~~] in this state in accordance with this section;

(B) rules relating to the education and experience requirements for [~~registration and~~] licensing as an [~~apprentice~~] inspector[, ~~inspector-in-training, and real estate inspector~~] *under this section*;

(C) rules relating to the qualifying examination required for [~~registration or~~] licensing as an inspector under this section;

(D) rules establishing a code of professional conduct and ethics for an [~~apprentice~~] inspector[, ~~inspector-in-training, and real estate inspector~~] *under this section*;

(E) reasonable fees to implement this section, including an application fee for [~~registration or~~] licensing, an examination fee, a renewal fee for a [~~registration or~~] license, and any other fee required by law;

(F) rules relating to continuing education requirements for a [~~registered or~~] licensed inspector;

(G) rules relating to the standards of practice for a real estate inspection;

(H) rules relating to granting or denying an application for the [~~registration of an apprentice inspector and~~] licensing of an [~~inspector-in-training and real estate~~] inspector;

(I) the form and format for any applications and forms required under this section; and

(J) any other action by the commission as may provide a high degree of service and protection to the public when dealing with [~~registered or~~] licensed inspectors.

(2) The committee is composed of nine members appointed by the commission. The members of the committee hold office for staggered terms of six years, with the terms of three members expiring February 1 of each odd-numbered year. Each member holds office until the member's successor is appointed. Appointments to the committee shall be made without regard to the sex, race, color, age, handicap, religion, or national origin of the appointees. In the event of a vacancy during a term, the commission shall appoint a replacement who meets the qualifications for appointment under this subdivision to fill the unexpired part of the term. A member of the committee must be a *professional* [~~licensed real estate~~] inspector actively engaged in the practice of real estate inspecting at the time of appointment and must have been primarily engaged in the *practice of* real estate *inspecting* [~~inspection business~~] for at least five years before the member's appointment. A member of the committee may not hold a real estate broker or salesman license. Each member of the committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act. The committee shall annually elect from its members a chairman, a vice-chairman, and secretary. A *quorum of the committee consists of five members.*

(3) *The commission may remove a committee member if the member:*

(A) *does not have at the time of appointment the qualifications required by Subdivision (2) of this subsection;*

(B) *cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or*

(C) *is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each year, unless the absence is excused by the committee.*

(4) *The validity of an action of the committee is not affected by the fact that it was taken when a ground for removal of a committee member exists.*

(5) *If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the chairman of the commission that a potential ground exists.*

(6) [(3)] The commission shall adopt procedural rules to be used by the committee in implementing its powers and duties.

(7) [(4)] The committee is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973

(Article 6252-17a, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(8) [(5)] The committee shall meet semiannually and at the call of the commission. The committee may also meet at the call of a majority of its members.

(9) [(6)] The committee shall *act in an advisory capacity* to develop and recommend to the commission [~~for approval the~~] rules [~~of the commission~~] under this section. The committee [~~periodically~~] shall review commission rules relating to this section and recommend changes in the rules to the commission. ~~The [Notwithstanding Subsection (f), Section 5, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the] commission shall submit all proposed rules, [and] all proposed rule changes and all requests for proposed rules or rule changes [additions to the rules] that relate to the regulation and licensing of [real estate] inspectors under this section to the committee for development or recommendation. The commission may modify the rules developed by the committee if the commission finds such modifications are in the public interest. This section does not prohibit the commission from developing and adopting rules relating to the regulation and licensing of inspectors under this section if the committee fails to develop or recommend rules under this section within a reasonable period of time after the commission submits the proposed rules, rule changes or requests for proposed rules or rule changes to the committee. If the committee determines that a rule requested by the commission should not be developed or recommended for adoption by the commission, the committee shall submit a report on the matter to the commission. The chairman of the commission and the chairman of the committee shall then appoint three members each from their respective bodies to meet as an ad hoc committee to consider the report and recommend possible action by the commission. The chairman of the commission or a member of the commission designated by the chairman shall serve as the seventh member of the ad hoc committee. At least one member of the ad hoc committee must be a public member of the commission.~~ ~~If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development].~~

(c) License [~~or registration~~] required. (1) A person may not act [~~or attempt to act~~] as a professional [~~real estate~~] inspector in this state for a buyer or seller of real property unless the person possesses a professional [~~real estate~~] inspector license issued under this section.

(2) A person may not act or attempt to act as a *real estate inspector* [~~an inspector-in-training~~] in this state for a buyer or seller of real property unless the person possesses a *real estate inspector* [~~an inspector-in-training~~] license issued under this section and is under the indirect supervision of a professional [~~real estate~~] inspector.

(3) A person may not act or attempt to act as an apprentice inspector in this state for a buyer or seller of real property unless the person is *licensed* [~~registered~~] under this section and is under the direct supervision of a real estate inspector or *professional inspector* [~~inspector-in-training~~].

(d) Eligibility; application. (1) To be eligible for a license [~~registration~~] as an apprentice inspector, an applicant must be an individual, a citizen of the United States or a lawfully admitted alien, and a resident of this state *at the time of the* [~~for at least 60 days immediately before the date of~~] filing of the application. The applicant must be sponsored by a professional [~~real estate~~] inspector licensed under this section. The applicant must be at least 18 years old. *The applicant must satisfy the commission as to the applicant's honesty, trustworthiness, and integrity.*

(2) To be eligible for a license as a *real estate inspector* [~~an inspector-in-training~~], an applicant must have met the requirements and *been licensed* [~~be registered~~] as an apprentice inspector for at least three months and have performed at least 25 real estate inspections under direct supervision before filing an application. The applicant must satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competency. An applicant for an original *real estate inspector* [~~inspector-in-training~~] license must submit satisfactory evidence to the commission of successful completion of not less than 90 classroom hours of core real estate inspection courses. *The commission by rule may specify the length and content of the core real estate inspection courses required*

by this subdivision. The commission shall determine the competency of an applicant on the basis of an examination required by Subsection (i) of this section. The applicant must be sponsored by a *professional* ~~[real estate]~~ inspector licensed under this section. *Notwithstanding this subdivision of this subsection, an applicant is eligible for and has satisfied all requirements for a license as a real estate inspector if the applicant was previously licensed as a real estate inspector during the preceding 24-month period immediately preceding the filing of the application, the applicant is sponsored by a professional inspector, and the applicant satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.*

(3) To be eligible for a license as a *professional* ~~[real estate]~~ inspector, an applicant must have met the requirements and have been *licensed* ~~[registered]~~ as an apprentice inspector for at least three months and licensed as a *real estate inspector* ~~[an inspector-in-training]~~ for at least 12 months and have performed at least 175 real estate inspections under indirect supervision before filing an application. An applicant for an original *professional* ~~[real estate]~~ inspector license must submit satisfactory evidence to the commission of successful completion of not less than 30 classroom hours of core real estate inspection courses and eight classroom hours related to the study of standards of ~~[professional]~~ practice, *legal issues, or [and] ethics* related to the profession of real estate inspections. These classroom hours are in addition to those required for ~~[registration as]~~ an apprentice inspector license or a *real estate inspector license* ~~[licensing as an inspector-in-training]~~. The commission shall determine the competency of an applicant on the basis of an examination required by Subsection (i) of this section. *Notwithstanding this subsection, an applicant is eligible for and has satisfied all requirements for a license as a professional inspector if the applicant was previously licensed as a professional inspector during the preceding 24-month period immediately preceding the filing of the application and the applicant satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.*

(4) *The commission by rule may provide for the substitution of relevant experience or education in lieu of the number of real estate inspections required by this section.*

(5) ~~[(4)]~~ An applicant must file an application for ~~[registration or]~~ a license with the commission on forms prescribed by the commission.

(e) Issuance of ~~[registration or]~~ license. The commission shall issue an apprentice *license* ~~[registration], [an inspector-in-training license, or]~~ a real estate inspector license, or a *professional inspector license* to an applicant who possesses the required qualifications, passes the appropriate examination *if required*, and pays the fee required by Subdivision (2) of Subsection (o) of this section.

(f) Expiration of ~~[registration or]~~ license; renewal. (1) A ~~[registration or]~~ license issued under this section expires one year after the date it is issued.

(2) A person may renew an unexpired ~~[registration or]~~ license by paying to the commission before the expiration date of the ~~[registration or]~~ license the required renewal fee.

(3) If a person's ~~[registration or]~~ license has been expired for 90 days or less, the person may renew the ~~[registration or]~~ license by paying to the commission the required renewal fee and a fee that is one-half of the examination fee, if any, for the registration or license.

(4) If a person's ~~[registration or]~~ license has been expired for longer than 90 days but less than one year, the person may renew the ~~[registration or]~~ license by paying to the commission all unpaid renewal fees and a fee that is equal to the examination fee, if any, for the ~~[registration or]~~ license.

(5) If a person's ~~[registration or]~~ license has been expired for one year or longer, the person may not renew the ~~[registration or]~~ license. The person may obtain a new ~~[registration or]~~ license by submitting to reexamination, if ~~[originally]~~ required, and complying with the requirements and procedures for obtaining an original ~~[registration or]~~ license. However, the commission may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the one year preceding application. The person must pay to the commission a fee that is equal to the examination fee for the license.

(f) At least 30 days before the expiration of a person's ~~registration or~~ license, the commission shall send written notice of the impending ~~registration or~~ license expiration to the person at the person's last known address according to the records of the commission.

(g) Change of address. A licensee ~~or person registered~~ under this section shall notify the commission and pay the required fee within 30 days after the date a change of place of business occurs.

(h) Fees. (1) The commission shall charge and collect reasonable and necessary fees to recover the cost of administering this section as follows:

(A) a fee not to exceed \$75 for the filing of an original application for a *license* ~~registration~~ as an apprentice inspector;

(B) a fee not to exceed \$125 for the filing of an original application for a license as a *real estate inspector* ~~[an inspector-in-training]~~;

(C) a fee not to exceed \$150 for the filing of an original application for a license as a *professional* ~~[real estate]~~ inspector;

(D) a fee not to exceed \$125 for the annual *license* ~~registration~~ renewal of an apprentice inspector;

(E) a fee not to exceed \$175 for the annual license renewal of a *real estate inspector* ~~[an inspector-in-training]~~;

(F) a fee not to exceed \$200 for the annual license renewal of a *professional* ~~[real estate]~~ inspector;

(G) a fee not to exceed \$100 for taking a license examination; and

(H) a fee not to exceed \$20 for a request for a change of place of business or to replace a lost or destroyed license ~~[or registration]~~.

(2) All fees may be paid by cash, check, cashier's check, or money order.

(3) The fees shall be reviewed annually and reduced to the extent that the costs of administering this section are funded by the real estate inspector regulation account established under Subdivision (4) of Subsection (o) of this section.

(i) Examination. (1) The commission shall prescribe the licensing examinations, which shall be prepared by or contracted for by the commission. A licensing examination shall evaluate competency in the subject matter of all required core real estate inspection courses. The licensing examination shall be offered not less often than once every two months in Austin. If a license applicant fails the examination, the applicant may apply for reexamination by filing a request with the commission and paying the examination fee. Each license applicant must satisfy the examination requirement not later than six months after the date on which the license application is filed. A license applicant who fails to satisfy the examination requirement within six months after the date on which the license application is filed must submit a new license application with the commission and pay the examination fee to be eligible for examination. *If a license applicant fails the examination three consecutive times in connection with the same application, the applicant may not apply for reexamination or submit a new license application with the commission for six months from the date he failed the last examination.*

(2) Not later than the 30th day after the date on which a licensing examination is administered under this section, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(3) If requested in writing by a person who fails a licensing examination administered under this section, the commission shall furnish the person with an analysis of the person's performance on the examination.

(j) Waiver for out-of-state applicants. The commission may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(k) Continuing education programs. The commission shall recognize, prepare, or administer continuing education programs for inspectors. Participation in the programs is mandatory. A *real estate inspector* [~~An inspector-in-training~~] must submit satisfactory evidence to the commission of successful completion of at least four classroom hours of core real estate inspection courses annually before a licensed renewal is issued. A *professional* [~~real estate~~] inspector must submit satisfactory evidence to the commission of successful completion of at least eight classroom hours of core related real estate inspection courses annually before a license renewal is issued.

(l) Prohibited acts. A *professional* [~~real estate~~] inspector, *real estate inspector* [~~or inspector-in-training licensed under this section~~] or an apprentice inspector *licensed* [~~registered~~] under this section may not:

(1) accept an assignment for real estate inspection if the employment or fee is contingent on the reporting of a specific, predetermined condition of the improvements to real property or is contingent on the reporting of specific findings other than those known by the inspector to be facts at the time of accepting the assignment;

(2) act in a manner or engage in a practice that is dishonest or fraudulent or that involves deceit or misrepresentation;

(3) perform a real estate inspection in a negligent or incompetent manner;

(4) act in the dual capacity of [~~real estate~~] inspector and undisclosed principal in a transaction;

(5) act in the dual capacity of [~~real estate~~] inspector and real estate broker or salesman *in a transaction*;

(6) perform or agree to perform any repairs or maintenance in connection with a real estate inspection pursuant to the provisions of any earnest money contract, lease agreement, or exchange of real estate; or

(7) violate the rules adopted by the commission or any provisions of this section.

(m) Offenses. (1) A person commits an offense if the person knowingly or intentionally engages in the business of real estate inspecting without a license [~~or registration~~] under this section or performs an inspection during a period in which the inspector's license [~~or registration~~] is revoked or suspended.

(2) An offense under this subsection is a Class B misdemeanor.

(3) The commission *may* [~~shall~~] authorize the committee to conduct administrative hearings *or* [~~and~~] recommend the entry of final orders, *or both*, in contested cases regarding a [~~registered or~~] licensed [~~real estate~~] inspector. *The commission may authorize specific employees to conduct hearings and render final decisions in contested cases regarding a licensed inspector.*

(4) The commission may investigate the actions of a [~~registered or~~] licensed [~~real estate~~] inspector and may, after notice and hearing in accordance with the provisions of Section 17 of this Act, *reprimand, place on probation, suspend or revoke* a [~~registration or~~] license for a violation of this Act or a rule of the commission. If the commission revokes a [~~registration or~~] license of a person, the person may not apply to the commission for one year after the revocation.

(n) Exemptions. This section does not apply to any electrician, plumber, carpenter, any person engaged in the business of structural pest control in compliance with the Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not represent to the public through personal solicitation or public advertising that the person is in the business of inspecting such improvements. The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which the person is authorized to perform pursuant to a license *or registration* issued by this state or any governmental subdivision of this state.

(o) Real estate inspection recovery fund. (1) The commission shall establish a real estate inspection recovery fund, which shall be set apart and maintained by the commission as provided by this subsection. The fund shall be used in the manner provided by this subsection for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed ~~[or registered real estate]~~ inspector, provided the ~~[real estate]~~ inspector was licensed ~~[or registered]~~ by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the ~~[real estate]~~ inspector. The use of the fund is limited to an act that is a violation of Subsection (l) of this section.

(2) When a person receives notice that the person has successfully completed the licensing examination provided by Subsection (i) of this section, the person shall pay, in addition to any other fees required by this section, a fee not to exceed \$200, which shall be deposited in the real estate inspection recovery fund prior to the commission's issuing the person *an* ~~[a real estate]~~ inspector license.

(3) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is less than \$300,000, each ~~[real estate]~~ inspector, on the next renewal of the person's license, shall pay, in addition to the license renewal fee, a fee of \$75, or a pro rata share of the amount necessary to bring the fund to \$450,000, whichever is less, which shall be deposited in the real estate inspection recovery fund.

(4) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is greater than \$600,000, the amount of money in excess of \$600,000 shall be transferred to a separate account in the general revenue fund to be known as the real estate inspector regulation account. The money in the real estate inspector regulation account may be used only for the payment of costs incurred by the commission in the regulation of ~~[real estate]~~ inspectors.

(5) No action for a judgment that results in an order for collection from the real estate inspection recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment that may result in collection from the real estate inspection recovery fund, the ~~[real estate]~~ inspector shall notify the commission in writing to this effect at the time of the commencement of the action.

(6) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against *an* ~~[a real estate]~~ inspector on the grounds described in Subdivision (1) of this subsection, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission and to the judgment debtor, may apply to the court where the judgment was rendered for an order directing payment out of the real estate inspection recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Subdivision (15) of this subsection.

(7) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show:

(A) that the judgment is based on facts allowing recovery under Subdivision (1) of this subsection;

(B) that the person is not a spouse of the debtor or the personal representative of the spouse and the person is not *an* ~~[a real estate]~~ inspector, as defined by this section;

(C) that the person has obtained a judgment under Subdivision (6) of this subsection that is not subject to a stay or discharge in bankruptcy, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(D) that based on the best information available, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment; and

(E) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(8) The court shall make an order directed to the commission requiring payment out of the real estate inspection recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this subdivision, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Subdivision (7) of this subsection and that the aggrieved person has satisfied all the requirements of Subdivisions (6) and (7) of this subsection. The commission may relitigate any issue material and relevant in the hearing on the application that was determined in the underlying action on which the judgment in favor of the applicant was based. If the court finds that the aggregate of claims against *an* ~~a real estate~~ inspector exceeds the limitations contained in this section, the court shall reduce proportionately the amount it finds payable on the claim.

(9) A recovery on the judgment against a single defendant made before payment from the real estate inspection recovery fund must be applied by the creditor first to actual damages.

(10) A license ~~[or registration]~~ granted under the provisions of this section may be revoked by the commission on proof that the commission has made a payment from the real estate inspection recovery fund of any amount toward satisfaction of a judgment against a licensed ~~[or registered real estate]~~ inspector. The commission may probate an order revoking a license ~~[or registration]~~. No ~~[real estate]~~ inspector is eligible to receive a new license ~~[or registration]~~ until the person has repaid in full, plus interest at the current legal rate, the amount paid from the real estate inspection recovery fund on the person's account.

(11) The sums received by the commission for deposit in the real estate inspection recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate inspection *recovery* fund. These funds may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from these investments shall be deposited to the credit of the real estate inspection recovery fund. However, investments may not be made that will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this subsection.

(12) When the commission receives notice of entry of a final judgment and a hearing is conducted under Subdivision (8) of this subsection, the commission may notify the Attorney General of Texas of the commission's desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate. In taking such action, the commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to ensure compliance with the requirements for recovery under this subsection.

(13) When, on the order of the court, the commission has paid from the real estate inspection recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission. The amount paid by the commission shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount in interest recovered by the commission on the judgment shall be deposited to the fund.

(14) The failure of an aggrieved person to comply with the provisions of this subsection relating to the real estate inspection recovery fund shall constitute a waiver of any rights under this subsection.

(15) Notwithstanding any other provision, payments from the real estate inspection recovery fund are subject to the following conditions and limitations:

(A) payments may be made only pursuant to an order of a court of competent jurisdiction, as provided by Subdivision (6) of this subsection, and in the manner prescribed by this subsection;

(B) payments for claims, including attorney fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to \$7,500 regardless of the number of claimants; and

(C) payments for claims based on judgments against a licensed ~~[or registered real estate]~~ inspector may not exceed in the aggregate \$15,000 until the fund has been reimbursed by the licensee for all amounts paid.

(16) Nothing contained in this subsection shall limit the authority of the commission to take disciplinary action against a person licensed [~~or registered~~] under this section for a violation of this section or the rules of the commission, nor shall the repayment in full of all obligations to the real estate inspection recovery fund by a person nullify or modify the effect of any other disciplinary proceeding brought pursuant to this section.

(17) A person receiving payment out of the real estate inspection recovery fund under Subdivision (15) of this subsection shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in that subdivision.

(18) An [~~A real estate~~] inspector licensed [~~or registered~~] under this section shall notify consumers and service recipients of the availability of the real estate inspection recovery fund established under this section for reimbursing certain aggrieved persons. The notice must include the name, mailing address, and telephone number of the commission and any other information required by commission rule. The notification may be provided:

- (A) on a written contract for the services of an [~~a real estate~~] inspector;
- (B) on a brochure distributed by an [~~a real estate~~] inspector;
- (C) on a sign prominently displayed in the place of business of an [~~a real estate~~] inspector; or
- (D) in a bill or receipt for service provided by an [~~a real estate~~] inspector.

(p) *Inactive licenses. The commission by rule may adopt terms and conditions by which an inspector may apply for, renew, or place a license on inactive status and rules by which an inactive inspector may return to active status.*

(q) *The commission shall consider the recommendations of the Texas Real Estate Inspector Committee relating to the qualifications and licensure of inspectors to assure the public of a quality professional inspection system in real estate transactions in Texas.*

SECTION 16. Persons licensed as real estate inspectors on the effective date of this Act are deemed to be professional inspectors for the purposes of this Act. Persons licensed as inspectors-in-training on the effective date of this Act are deemed to be real estate inspectors for the purposes of this Act. Persons registered as apprentice inspectors on the effective date of this Act are deemed to be licensed apprentice inspectors for the purposes of this Act.

SECTION 17. For the sole purpose of satisfying eligibility requirements under Subdivision (2) of Subsection (d) of Section 23 of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), a person who was previously licensed as an inspector-in-training or a real estate inspector at any time during the 24-month period before the effective date of this Act is deemed to have been previously licensed as a real estate inspector.

SECTION 18. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1993.

(b) The provision of Section 6 of this Act amending the minimum number of hours required to be completed in a course in the Law of Agency by an applicant for a salesman license takes effect for all applications filed on or after September 1, 1994.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 31, 1993, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 991 on April 29, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 991 on May 18, 1993, by a non-record vote; passed by the Senate, with amendments, on April 22, 1993, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 991 on May 26, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993, except as provided in § 18(b).